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**COPY MAILED**

**SEP 29 2005**

**OFFICE OF PETITIONS**

In re Application of  
Cho, et al.  
Application No. 10/727,702  
Filed: December 4, 2003  
Attorney Docket No. 6711.US.C1

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed March 9, 2005, requesting withdrawal of the holding of abandonment.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit the issue fee and publication fee in reply to the September 27, 2004 Notice of Allowance and Fee(s) Due, which set a three month period for reply. Accordingly, the above-identified application became abandoned on December 28, 2004. A Notice of Abandonment was mailed on February 11, 2005.

An allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>1</sup>

A review of the record indicates no irregularity in the mailing of the September 27, 2004 Notice of Allowance and Fee(s) Due, and in the absence of any irregularity there is a strong presumption

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<sup>1</sup> See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

that the communication was properly mailed to the applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner is not practicing at the correspondence address of record. Practitioner's address and the address listed at the bottom of the petition is:

HOSPIRA, INC.  
275 NORTH FIELD DRIVE  
DEPT. NLEG, BLDG., H-1  
LAKE FOREST, IL 60045-257

The September 27, 2004 Notice was properly mailed to the Abbott Laboratories address. The fact that practitioner did not receive the September 27, 2004 Notice at the Hospira, Inc., address does not establish non-receipt.

A statement from the practitioners at the Abbott Laboratories address is required. Only they can provide a proper showing of non-receipt.

Since petitioners allege non-receipt of the September 27, 2004 Notice, a copy is enclosed. It is assumed the September 27, 2004 Notice of Allowability was not received, either. A copy of it is enclosed, as well.

Petitioners are encourage to file either a petition to revive under 37 CFR 1.137(a) – the unavoidable standard – or a petition under 37 CFR 1.137(b) – the unintentional standard. The copy of the two September 27, 2004 Notices will allow petitioners respond properly by paying all required fees and returning a completed Part B - Fee(s) Transmittal. Doing so will avoid further delays in the issuance of any future patent.

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**By hand:** U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

**By FAX:** (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosures:   copy of Notice of Allowance and Fee(s) Due - September 27, 2004  
                  copy of Notice of Allowability - September 27, 2004

cc:   HOSPIRA, INC.  
      275 NORTH FIELD DRIVE  
      DEPT. NLEG, BLDG., H-1  
      LAKE FOREST, IL 60045-257